

MHLA090004972015



Order below Exh.68 in R.C.S.No.101/2015

The present application is filed by defendant no.3 for amendment of written statement as per provisions Order VI Rule 17 of the Code of Civil Procedure, 1908.

2) Defendant no.3 vide this application contends that, present suit is filed by the plaintiff against the defendants for partition. Defendant no.3 vide this amendment seeks to incorporate additional defence in her written statement. Hence, defendant no.3 prayed that, she may be permitted to amend the written statement to that effect.

3) No say is filed by the plaintiff. Hence application is proceeded without say.

4) From the consideration of the facts and contents of the application following points arises for my determination to which I, have recorded my findings for reason stated below.

S.N.	Points for determination	Findings
1.	Whether proposed amendment is necessary to determine real controversy between the parties ?	Yes.
2.	What order ?	Application is allowed.

REASONS

AS TO POINT NO.1 & 2:-

5) Heard the Ld. Advocate Shri. D.A.Sabane for the defendants at length. Nobody argued on behalf of the plaintiff.

6) Perused the application and record of the case. The present suit is filed for relief of partition of the suit properties by the plaintiff against the defendants. Defendant no.3 vide this application seeks to incorporate additional defence in their written statement. As per settled principle of law merit of amendment should not taken into consideration while deciding the amendment application. Order VI Rule 17 provides as under:-

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

7) The parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the

proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8) Thus, the proposed amendment will not by itself change the nature of suit. In these circumstances, application needs to be allowed. Accordingly, I point no.1 in affirmative & in answer to point no.2, the following order-

ORDER

1. Application Exh.68 is allowed, subject to Costs of Rs.300/- to be paid to Legal Aid on or before next date.
2. Defendant no.3 is directed to carry out the amendment within 14 days from date of this order and shall furnish the copies of amended written statement.

Udgir
Dt.:01/07/2024

(K. A. Powar)
2nd Jt. Civil Judge J.D., Udgir